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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. ~~1069.~~ 174

ALBERT R. COSGROVE,
Petitioner,

vs.

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, a Corporation;
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

BRIEF FOR RESPONDENT IN OPPOSITION.

HENRY DRIEMEYER,
ROBERT L. BRODERICK,
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East St. Louis, Illinois,
Attorneys for Respondent.

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Petitioner states that jurisdiction is invoked under Section 1257 (3) of Title 28 United States Code. Jurisdiction, however, does not exist.

Petitioner's prayer is for a writ of certiorari to the Supreme Court of Illinois. That court simply denied a petition for leave to appeal from the judgment of the Appellate Court of Illinois for the Fourth District. The Appellate Court was the highest court of Illinois in which

a decision could be had on the merits of petitioner's claim. The Appellate Court dismissed an appeal by petitioner from an adverse judgment of the Circuit Court of Madison County, Illinois, for the reason that the record on appeal to the Appellate Court from the Circuit Court was not filed within the time required by Illinois Supreme Court Rule 36, 7 Ill. (2nd), 57, 58, and by Rule 1 of the Uniform Illinois Appellate Court Rules, 7 Ill. App. (2nd), VIII. The provisions of the rules of the Supreme Court of Illinois and of the Appellate Court made such dismissal mandatory.

The decision of the Illinois Appellate Court rested entirely upon a question of Illinois procedural law. This court does not have jurisdiction to review decisions of State courts which rest upon adequate non-federal grounds and, particularly, upon State laws and practice relative to jurisdiction of Appellate Courts and the mode and time of invoking that jurisdiction. This court in **John v. Paullin**, 231 U. S. 583, 585, 58 L. Ed. 381, 382, citing many previous decisions said:

> "As the supreme court of the state did not pass upon the merits of the case or upon the correctness of any of the rulings below, but, on the contrary, held that it was powerless to do so because its appellate jurisdiction was not invoked in accordance with the laws of the state, we do not perceive any theory upon which its judgment of dismissal may be reviewed by us consistently with the familiar limitations upon our authority. * * * Certainly no Federal right was denied by that court, and if, as was held by it, its appellate jurisdiction was not properly invoked, no Federal question was before it for decision.
>
> "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise, and the

state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law."

See also **McCoy v. Shaw**, 277 U. S. 302, 72 L. Ed. 891; **Matheson v. Bank of Alabama**, 7 Howard 260, 12 L. Ed. 692; **Newman v. Gates**, 204 U. S. 89, 51 L. Ed. 385; **Chesapeake & Ohio Ry Co. v. McDonald**, 214 U. S. 191, 53 L. Ed. 963; **Central Union Telephone Co. v. City of Edwardsville**, 269 U. S. 190, 70 L. Ed. 229.

It is, therefore, respectfully submitted that petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

HENRY DRIEMEYER,
ROBERT L. BRODERICK,
Attorneys for Respondent.